IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10556 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT STATE CO-OPERATIVE BANK LTD. - Petitioner(s)
Versus
CHAROTAR NAGRIK SAHAKARI BANK LTD. & 1-Respondent(s)

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Appearance :
MR KG VAKHARIA, SR. ADVOCATE, with MR MK VAKHARIA for Petitioner(s):1,MS AVANI S MEHTA for Petitioner(s): 1
MR AJ YAGNIK for Respondent(s) : 1,
MR AMAR N BHATT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 02/12/2006
ORAL JUDGMENT

(1) RULE. The learned advocates for the respective respondents are directed to waive service of rule.

(2) This petition has been filed praying for following reliefs:

“9. In the premises aforesaid, the petitioner prays as under:

A) Your Lordships may be pleased to admit the present petition;

B) Your Lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 2.3.2005 passed by the Honourable Tribunal in Revision Application No.307 of 2004, (Annexure-"A");

C) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Liquidator of the respondent-Bank to satisfy the claim of the petitioner-Bank on first priority basis as per the Circular dated 23.01.2004;

D) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the advertisement published by the respondent-Bank in Gujarati daily newspaper, namely, Gujarat Samachar on 19.5.2005, for public auction of the properties of the respondent-Bank, (Annexure "I"), and further be pleased to restrain respondent-Bank from disposing of its properties in any manner whatsoever till the dues of the petitioner-Bank are cleared;

E) Pending the hearing and final disposal of the petition, Your Lordships may be pleased

(i) to stay and suspend the execution, implementation, operation and enforcement of the impugned order dated 2.3.2005 passed by the Honourable Tribunal in Revision Application No.307 of 2004, (Annexure "A");

(ii) to stay and suspend the further proceedings in pursuance the advertisement published by the respondent-Bank in Gujarati daily newspaper, namely, Gujarat Samachar on 19.5.2005, for public auction of the properties of the respondent-Bank, (Annexure "I");

F) An ex-parte ad-interim relief in terms of prayer (E) may kindly be granted.

G) And to pass such other and further orders as may be deemed just and proper;

(3) It is an admitted position between the parties that though there might be distinction qua the facts, the principal issue is the same as in case of *The Federation of Kheda District Co-operative Credit Societies Limited & Ors. Vs. The State of Gujarat & Ors.*, Special Civil Application No.20104 of 2006 and cognate matters viz. whether the Registrar, Co-operative Societies, in exercise of his powers of general supervision, control and direction under Section 110 of the Gujarat Co-operative Societies Act, 1961 (the Act), can issue a circular so as to lay down order of priority for disbursement in the process of liquidation despite the provisions of Section 110(e) of the Act specifying that the liquidator appointed under Section 108 of the Act shall have the powers to investigate all claims against the society and to decide the questions of priority arising out of such claims.

(4) It has been held by judgment rendered today in case of *The Federation of Kheda District C-operative Credit Societies Limited & Ors. Vs. The State of Gujarat & Ors.*, in Special Civil Application No.20104 of 2006 and cognate matters, that the Registrar does not have powers and hence, in so far as the present petition is concerned, the same is allowed for the

reasons stated in the said judgment and with the same directions the matter is restored to the liquidator for deciding the order of priority afresh and hence, any orders made in light of any of the circulars issued by the Registrar shall not hold the field. It will be open to the parties to raise all contentions in accordance with law before the Registrar. In the circumstances no opinion is expressed as to merits/validity of the order made by the Tribunal and the petition is disposed of accordingly. RULE made absolute pro tanto. There shall be no order as to costs.

(5) At this stage a request is made on behalf of the respondent authorities that the liquidator may be prohibited for some time from making any order of disbursement. This prayer is required to be stated to be rejected as the Court has merely directed, in each of the petitions, that the liquidator shall decide the order of priority afresh without being influenced by any of the circulars issued by the Registrar. Therefore, in absence of any order of priority as of today, there cannot be any disbursement which is required to be stayed. Hence, the request is rejected.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*